



CITY COUNCIL AGENDA REPORT

MEETING DATE: July 7, 2009

ITEM NUMBER: IX-3

07 JUL 2009

SUBJECT: SOLICITION OF EMPLOYMENT, BUSINESS, CONTRIBUTIONS FROM STREETS

DATE: June 29, 2009

FROM: CITY ATTORNEY'S OFFICE

PRESENTATION BY: KIMBERLY HALL BARLOW, CITY ATTORNEY

FOR FURTHER INFORMATION CONTACT: KIMBERLY HALL BARLOW (714) 754-5399

RECOMMENDATION:

1. Give Direction as to whether to bring forward proposed revisions to City's Municipal Code provisions relating to solicitation of employment, business or contributions from streets and commercial parking lots, and zoning provisions regarding job centers.

BACKGROUND:

In June, 2005, the Council amended the City's municipal code regarding solicitation of employment, business and contributions on public streets and in certain parking lots to maximize the protection of public safety and access while protecting the first amendment rights of those who wish to engage in protected speech in the public right of way. Subsequent to those amendments, the City of Orange enacted somewhat more restrictive provisions regarding similar conduct, as well as enacting some zoning provisions relating to job centers. The City Council has requested that the City Attorney's Office report on the status of the Orange Ordinances and advise the Council of the differences between Costa Mesa's ordinance and the Orange ordinances.

ANALYSIS:

Costa Mesa's solicitation ordinance is designed to address conduct which creates a public safety hazard and/or obstructs egress and ingress on public streets and parking lots. It prohibits "active solicitation" by, of or from persons in moving motor vehicles, as well as solicitation in commercial parking areas which have posted a sign prohibiting this type of conduct. The prohibition does not extend to passive solicitation, such as standing on a sidewalk or parkway with a sign, distributing literature to pedestrians or persons in lawfully parked vehicles or verbal communications to pedestrians and those in lawfully parked vehicles. It also does not prohibit any speech or conduct in areas of private property which are primarily intended for congregation of persons and exchange of communications. A copy of Costa Mesa's current code provisions relating to solicitation is Attachment 1 to this report.

Orange's ordinance is similar to Costa Mesa's, but contains two provisions which are different from Costa Mesa's code. First, Orange's ordinance prohibits any solicitation from any public sidewalk which is adjacent to a street or highway which does not permit legal parking. This restriction appears to be somewhat broader than Costa Mesa's which would allow for passive solicitation (by means of signs, etc.) at such locations, but disallows "active solicitation" in such locations because a vehicle could not lawfully park there. The second difference is that Orange's ordinance prohibits day laborer solicitation, specifically, on any public right of way

which is immediately adjacent to private property which has a permit issued to it as a "hiring center." Orange's ordinance, including findings, is Attachment 2 to this report. Such hiring centers are defined and regulated in a different section of Orange's municipal code. In essence, Orange has added to its zoning provisions a definition of "job center" and created a discretionary review process for permitting of such centers. This separate ordinance defines a job center as a location at which five or more persons seeking employment are permitted by the private property owner to congregate at the same time to solicit work to perform at an off-site location for someone other than the property owner. Such job centers are required to obtain a conditional use permit. The Orange ordinance with these zoning requirements is Attachment 3 to this report. Under the City's current code, this type of use would be treated the same as Offices: Services to businesses such as bookkeeping and data processing, shown in the Land Use Matrix, Table 13-30, row 114. Thus, job centers would be permitted "by right" in the Administrative and Professional, Commercial, Town Center, General Industrial, Industrial Park, Planned Development Commercial and Planned Development Industrial zones, so long as all operations were conducted "under roof." If any operations, such as congregation of job seekers, were permitted outside, the City's code requires review and approval of a minor conditional use permit by the Zoning Administrator.

We have been advised by Orange staff that the solicitation ordinance is working well and they have not had difficulties with either legal challenges or enforcement. The ordinance changes have not eliminated the problems of solicitors congregating in certain areas, but the numbers of congregants are down and they are more spread out, thus, decreasing the secondary impacts of this activity on egress and ingress, traffic safety, pedestrian access to sidewalks, trash accumulation and other health hazards. Orange staff indicated that no CUP applications have been made or processed under the zoning code changes enacted there.

ALTERNATIVES CONSIDERED:

The Council may choose whether to give staff direction to bring forward amendments to the City's solicitation ordinance, and/or whether to direct staff to bring forward zoning code amendments to the Planning Commission relating to job centers.

FISCAL REVIEW:

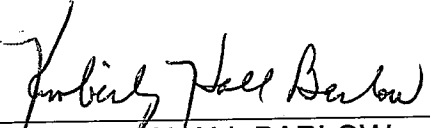
No fiscal review if needed at this time.

LEGAL REVIEW:

The City Attorney's office has prepared this report for Council consideration and direction.

CONCLUSION:

It is recommended that City Council consider whether it wishes staff to bring forward code amendments regarding solicitation and/or zoning provisions regarding job centers, and if so, to give staff direction on changes the Council would like included.


KIMBERLY HALL BARLOW
City Attorney


KIMBERLY BRANDT,
Acting Development Services Director


ALLAN R. ROEDER
City Manager

DISTRIBUTION:

ATTACHMENTS: 1 Costa Mesa Solicitation Ordinance
 2 City of Orange Ordinance No. 19-07
 3 City of Orange Ordinance No. 23-07

File Name

Date

Time

CHAPTER XIX. SOLICITATION OF EMPLOYMENT, BUSINESS, OR CONTRIBUTIONS FROM STREETS AND CERTAIN COMMERCIAL PARKING LOTS

Sec. 10-354. Prohibition of solicitation in public streets.

(a) It shall be unlawful for any person to stand on a street and actively solicit employment, business, or contributions from any person in a motor vehicle traveling along a street.

(b) It shall be unlawful for any person in a motor vehicle traveling along a street to solicit employment of any person standing on a street, to solicit from or make contributions to any such person, or to solicit or engage in a business transaction with such person.

(c) This section does not apply to freeway oriented solicitation prohibited by California Vehicle Code section 22520.5.

(Ord. No. 88-21, § 2, 12-19-88; Ord. No. 89-24, § 2, 8-7-89; Ord. No. 91-13, § 1, 5-20-91; Ord. No. 01-21, § 1, 9-5-01; Ord. No. 02-7, § 1, 4-1-02; Ord. No. 05-7, § 2, 4-26-05; Ord. No. 05-8, § 1, 5-3-05)

Sec. 10-354.1. Prohibition of solicitation in commercial parking areas.

(a) No person in a commercial parking area shall solicit employment, business or contributions of money where the owner has posted a sign on the premises complying with this section giving notice of the prohibition. This prohibition does not apply to walkways, plazas, or other areas adjacent to a parking area which are primarily intended for the congregation of persons and communication between persons of any kind, does not apply to premises which are intended or required by law to be open to the public for communicative purposes pursuant to *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980), and does not apply to only distribution of literature.

(b) The sign shall comply with each of the following requirements:

- (1) Be posted in a conspicuous place making it easily viewable by persons entering or standing in the commercial parking area. Where necessary to be easily viewable due to the size or configuration of the area, more than one sign shall be posted.
- (2) Have a size of not less than eighteen by twenty-four (24) inches and not exceeding a total area of six (6) square feet.
- (3) Contain a notice with lettering not less than one (1) inch in height in substantially the following form:

"It is prohibited and illegal to solicit employment, business or contributions of

money anywhere in this parking area without the owner's written authorization by order of the owner. CMMC 10-354.1"

The notice may be written in English or in English and Spanish, at the owner's discretion.

(c) Where a sign (or signs) is posted in a commercial parking area complying with this section, there is a presumption it was posted by the owner.

(d) An owner who has posted such a sign in a commercial parking area shall send written notification of the prohibition to the chief of police containing a map showing the legal boundaries of the owner's property and of the commercial parking area thereon and the name, address and telephone number of the owner or the owner's property manager agent.

(Ord. of 02-7, § 1, 4-1-02; Ord. No. 05-7, § 3, 4-26-05; Ord. No. 05-8, § 2, 5-3-05)

Sec. 10-354.2. Definitions.

As used in this chapter:

- (1) *Actively solicit* shall mean solicitation accompanied by action intended to attract the attention of a person in a vehicle traveling in the street such as waving arms, making hand signals, shouting to someone in a traveling vehicle, jumping up and down, waving signs pointed so as to be readable by persons in traveling vehicles, quickly approaching nearer to vehicles which are not lawfully parked, and entering the roadway portion of a street. "Actively solicit" does not include peaceably standing on a sidewalk, or on a parkway on any street segment without a sidewalk, with a sign seeking employment, contributions or business; distribution of literature to pedestrians or occupants of legally parked vehicles; or verbally communicating desire or availability for employment, contributions or business to pedestrians or to persons in lawfully parked vehicles
- (2) *Commercial parking area* shall mean privately owned property open to the public and used primarily for the parking of vehicles of customers, guests, and/or employees of nearby business establishments.
- (3) *Curb* shall mean the lateral boundary of the roadway, whether or not such curb is marked by curbing construction; however, the word "curb" shall not include the line dividing the roadway of a street from parking strips in the center of a street, nor from tracks or rights-of-way of public utility companies.

- (4) *Employment* shall mean and include services, industry or labor performed by a person for wages, or other compensation or under any contract of hire, written, oral, express or implied.
- (5) *Median* shall mean a paved or planted area separating a street, or highway, into two (2) or more lanes or directions of travel.
- (6) *Owner* shall mean the fee owner of a commercial parking area, the lessee of an entire commercial parking area, or the property manager agent of such fee owner or lessee.
- (7) *Parkway* shall mean the area of a public street that lies between the curb and the adjacent property line or physical boundary definition (such as a sidewalk), which is used for landscaping and/or passive recreational purposes.
- (8) *Sidewalk* shall mean that portion of the public right of way which is between the curbface and the parallel edge of the pavement furthest from the curb but still within the public right of way where the sidewalk is contiguous with the curb, or that portion of the public right of way which is a paved area between a parkway and adjacent private or public property, which is generally used by pedestrians and persons in non-motorized vehicles. Sidewalk does not include median.
- (9) *Solicit* shall mean and include any request, offer, enticement, or action which announces the availability for or of employment, the sale of goods, or other request for funds; or any request, offer, enticement or action which seeks to purchase or secure goods or employment, or to make a contribution of money. As defined herein, a solicitation shall be deemed complete when made whether or not an actual employment relationship is created, a transaction is completed, or an exchange of money takes place.
- (10) *Street* shall mean all of the area dedicated to public use for public street purposes and shall include, but not be limited to, roadways, parkways, medians, alleys, sidewalks, driveways, curbs, and public ways.
- (11) *Traveling along a street* shall mean a vehicle being operated on a street, excluding vehicles lawfully parked at the edge of a street or temporarily, lawfully stopped at a marked passenger loading zone.

(Ord. No. 02-7, § 1, 4-1-02; Ord. No. 05-7, § 4, 4-26-05; Ord. No. 05-8, § 3, 5-3-05)

ORDINANCE NO. 19-07**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF ORANGE ADDING A NEW CHAPTER 9.37
REGULATING SOLICITATION.**

WHEREAS, for nearly two decades, if not more, the City of Orange (hereafter, "City") has experienced negative secondary impacts arising out of the activities of pedestrians and motorists who utilize public right of ways and commercial parking lots to solicit for employment services, goods and contributions (hereafter, "off-site solicitation"); and

WHEREAS, while the primary reason the City Council desires to regulate solicitation is due to negative secondary effects created by activities of day laborers, any solicitation which involves individuals soliciting motorists from medians or locations adjacent to streets that have no on-street parking can cause traffic hazards; and

WHEREAS, individuals who engage in day laborer solicitation typically congregate in large numbers on both public and private property; and

WHEREAS, solicitation of motorists driving on City streets and in commercial parking lots distracts motorists from their primary duty, which is to safely operate a motor vehicle so as to not impede the free flow of traffic and to avoid causing damage to property and/or injury to persons; and

WHEREAS, the negative impacts caused by solicitation include, but are not limited to: traffic hazards caused by vehicles stopping in traffic lanes, vehicles stopping on driveway aprons, jay walking, individuals running out into streets to contact potential employers, including a phenomena known as "swarming" wherein groups of solicitors will converge on a vehicle and in some cases enter the vehicle or jump into the back of pickup trucks without invitation and on occasion in vehicles in which the motorists are not even seeking workers; day laborer solicitors being transported in vehicles in an unsafe and illegal manner; littering; public urination; interference with access to public sidewalks; increased drug, gambling and other criminal activity on public sidewalks; interference with on-site commercial business operations by various means including, but not limited to, solicitors making lewd gestures or comments to customers, congregating around entrances to businesses, standing in the path of customers, occupying bathrooms intended for customers, occupying tables at restaurants without purchasing any items, and ignoring repeated requests by the restaurants and business owners to leave the premises; and

WHEREAS, the City Council takes official notice of the negative impacts caused by solicitation countrywide; and

WHEREAS, for two decades the City and private property owners have made numerous attempts and expended significant resources to address the negative impacts of off-site solicitation including opening a day labor center (the "Resource Center") in 1990; dropping the identification requirement at the Resource Center in 2005 (subsequently re-instituted in 2007); adopting and enforcing private property no solicitation ordinances; targeted enforcement efforts relating to other City code violations committed by persons engaged in off-site solicitation such

as public urination and jaywalking; handing out flyers in English and Spanish apprising off-site solicitors and employers of the Resource Center; changing the manner in which the Resource Center operates; advertising the Resource Center in the Orange Progress which reaches all residents; involving community groups in outreach efforts; keeping the public sidewalks available for off-site solicitation; interviewing businesses for possible solutions; posting signs prohibiting off-site solicitation; and hiring security guards to move solicitors off private property; and

WHEREAS, none of these efforts have had any lasting impact and some have actually exacerbated the negative impacts; and

WHEREAS, enforcement of violations of other City laws such as public urination, littering and trespass has not resolved the secondary effects for several reasons including the fact that for a police officer to cite the individual, he or she must catch them in the act; day laborers often quickly disperse from posted private property upon seeing a police vehicle only to return when the police vehicle leaves and at times have stationed lookouts; day laborers generally do not appear in court to answer to their citations and bench warrants for their arrest are often futile because they provide false names or produce false identity; there are numerous informal day labor sites in the City and stationing police officers at all such sites would be a huge financial burden, would result in sites moving to other places and would significantly detract from policing activity for other criminal activities; and

WHEREAS, it is recognized that while not all day laborers engage in all the types of conduct which gives rise to the secondary negative impacts, the evidence shows that the vast majority do not respect the right of a property owner to not have them gather on their private property and ignore posted signs and repeated requests to leave and are at times openly hostile responding with cursing and lewd gestures; and

WHEREAS, over the past years and at least as far back as 1989, the City has received substantial numbers of complaints from residents, business customers and businesses concerning aggressive and unsanitary conduct by solicitors that results in customers not patronizing a business at all, customers altering the hours they shop, an enhanced sense of fear, intimidation and disorder and a decrease in business when off-site solicitors are present; and

WHEREAS, day laborer solicitation at informal day labor sites is by its nature disorderly and competitive and encourages aggressive behaviors because often the day laborer who is the most aggressive with both the potential employer and competing day laborers is the individual who obtains employment; and

WHEREAS, the congregation of individuals engaged in solicitation on commercial property has been shown to cause negative impacts to not only that property, but also to adjacent and nearby commercial properties; and

WHEREAS, individuals engaged in day labor solicitation often congregate in commercial parking lots and interfere with the safe ingress and egress of motorists and often occupy parking spots intended for or customer or employee parking; and

WHEREAS, under current City law property owners are required to post signs at all entrances to property stating that employment solicitation is not permitted on their property which results in additional costs to the property owner, the proliferation of signs in the City and signs being stolen; and

WHEREAS, in opening the Resource Center, the City has designated a site at which individuals can legally and more safely engage in day laborer solicitation and provides a reasonable alternative for day laborers to advertise their availability for employment; and

WHEREAS, the Resource Center appears to have caused day laborers to congregate on adjoining and nearby public and private property for the purpose of avoiding the rules and regulations of the Resource Center; and

WHEREAS, numerous studies have shown that employment of day laborers at informal employment centers such as street corners and parking lots present numerous additional problems that arise during the course of employment including violations of state and federal labor and tax laws, low wages, high injury rates to day laborers, day laborers being left abandoned at work sites, day laborers not being paid at all, unsafe working conditions, etc; and

WHEREAS, studies indicate that formal day labor centers reduce these problems and thus, encourage regulations that provide incentives to day laborers to utilize formal day labor centers at which employees and employers register; and

WHEREAS, outside of the Resource Center there are numerous alternative forms of communication which can be utilized by off-site solicitors, including, but not limited to, public sidewalks adjacent to streets with on-street parking, employment agencies which can be accessed via the City's website and are listed at the Resource Center, want ads, direct solicitation to employers who may require day labor services at the employers' places of business, the opportunity for private property owners to establish hiring centers, telephone and mail solicitation, distribution of flyers and solicitation directed to lawfully parked vehicles and pedestrians.

NOW THEREFORE, the City Council of the City of Orange does ordain as follows:

SECTION I:

Chapter 12.65 shall be deleted in its entirety.

SECTION II:

Chapter 9.37 shall be deleted in its entirety and replaced with the following:

**“Chapter 9.37
SOLICITATION FROM PUBLIC AND PRIVATE PROPERTY**

Sections:

9.37.010	Purpose of Chapter.
9.37.020	Definitions.
9.37.030	Prohibitions.
9.37.040	Exceptions.
9.37.050	Resource Center Regulations.
9.37.060	Penalty.

9.37.010 Purpose of Chapter.

Large congregations of day laborers at informal day labor sites have for many years, if not decades, blocked and obstructed the public's use of public right of ways, interfered with the use and enjoyment of private property by private property owners, created traffic hazards and have caused other negative impacts and therefore constitute a public nuisance. In addition, solicitations for the exchange of money, property or employment services directed from or toward motorists traveling on City streets impede the free flow of traffic and create traffic hazards on those streets where there is no on-street parking. It is the intent of this Chapter to remove obstructions for the safe passage of motorists and pedestrians on the streets and sidewalks, to minimize the interference with the use and enjoyment of private property caused by solicitation, to encourage the use of the Resource Center and other hiring centers, and to encourage more formal and orderly alternative means for solicitation to minimize the negative secondary impacts. The City Council finds that regulations are needed to prohibit day laborer solicitation in public areas near the Resource Center and private property hiring centers to increase their utilization and to minimize negative secondary effects to nearby properties caused by day labor activity in and around formal hiring centers. The following regulations are content neutral and impose reasonable time, place and manner regulations on solicitation from public right of ways and commercial parking lots.

9.37.020 Definitions.

For purposes of this Chapter the following definitions shall apply:

- A. “City property” shall mean and include any City street, highway, sidewalk, easement or other City property that is not specifically designated for off-site soliciting activities.
- B. “City street” shall mean all portions of a roadway used by motor vehicles for travel or parking, including any medians lying within such roadways.
- C. “Commercial parking lot” shall mean privately owned property that is designed or primarily used by customers of the property owner for parking, ingress and egress.
- D. “Day laborer solicitation” shall mean and include any action by a person to announce his availability for employment to persons operating motor vehicles or by a person operating a motor vehicle to offer employment to a pedestrian.

E. "Solicitation" or "solicit" shall mean and include any request, offer, enticement, or similar action by an individual to advertise or announce his availability for employment, to offer employment, to sell or purchase goods, property or services or to seek or make contributions of money or property, that is intended to consummate a physical exchange of money and/or property between a motorist and pedestrian or entry by a pedestrian into a vehicle. A solicitation shall constitute a violation of this Chapter when made whether or not an actual employment, sale, purchase or contribution transaction is completed.

F. "Public right of way" shall mean and include any street, highway, driveway, parkway or sidewalk within the City limits.

G. "Property owner" shall mean the fee owner of the property, the property owner's authorized agent, any tenant in lawful possession of the property and/or the tenant's authorized agent.

H. "Resource Center" shall mean the City's day labor hiring center located on McPherson Road in the City of Orange.

9.37.030 Prohibitions.

A. No person shall solicit from any public sidewalk that is immediately adjacent to any City street or highway upon which a motorist cannot legally park.

B. No person shall, while operating a motor vehicle on or along a City street, solicit from the motor vehicle unless the motor vehicle is legally parked.

C. No person shall, from a location on any private property engage in solicitation absent the express written permission of the property owner.

1. For this subsection "C" to become operative the property owner shall either notify the City's Police Department in writing that solicitation is not permitted on their property and the location of such property, orally inform a police officer that such permission has not been granted and request removal of solicitors and/or post a sign at each entrance to the property not less than eighteen by twenty-four inches in size with lettering not less than one inch in height and not to exceed six square feet which substantially provides as follows:

"It is a misdemeanor to engage in the solicitation for and of employment other than to perform the employment on or for the owner or occupants of the premises."

The written no solicitation notice shall be effective until withdrawn in writing. The oral request for removal of solicitors shall be effective only for the day upon which it is given.

D. No person shall solicit while stopped or standing in any through traffic lane, upon any street median or upon any driveway apron located within the public right of way.

E. No person shall engage in day laborer solicitation on any public right of way that is immediately adjacent to any private property that has been issued a permit for a hiring center in accordance with Section 17.30.070 of this Code.

F. No person shall solicit from any public sidewalk in a manner that impedes pedestrian access to such public sidewalk.

G. No person shall remain on any private property for the purpose of engaging in solicitation after they have been requested to leave by the private property owner.

H. This Chapter shall not be interpreted to relieve any person from obtaining a certificate of identification to engage in those solicitation activities governed by Chapter 5.66 of this Code.

9.37.040 Exceptions.

A. A person may solicit from a commercial parking lot if such person has the express permission of the property owner. However, if a property owner permits five or more persons to congregate for the purpose of engaging in solicitation upon their private property, a permit issued by the City in accordance with Section 17.30.070 of this Code must be obtained by the property owner. A person with the property owner's express written permission to engage in off-site solicitation shall not be liable for a violation of this Chapter solely on the basis that the property owner has failed to obtain a permit.

B. This Chapter shall not apply to solicitations from private property to perform services that are provided upon the property from which the solicitation occurs or to sell or purchase goods from or to the subject property owner.

C. This Chapter shall not apply to conduct which solely involves the distribution of literature or to private property which is required by law to be open to the public for communicative purposes such as plaza areas and walkways of large shopping centers where the general public is invited to congregate.

9.37.050 Resource Center Regulations.

A. Persons engaged in the solicitation for employment may utilize the Resource Center for such solicitation provided that such persons abide by the rules and regulations established by the Resource Center. Persons who do not abide by such rules and regulations may be prohibited from using the Resource Center for a minimum period of three months and a maximum period of one year.

B. Other than the Resource Center property, no person shall engage in any day laborer solicitation on any City property, which is located on McPherson Road between its intersection with Chapman Avenue to the south and its intersection with Spring Street to the north. No person shall engage in day laborer solicitation upon any property located within Grijalva Park or upon any public right of way immediately adjacent to Grijalva Park. This subsection shall only apply to those hours in which the Resource Center is open.

9.37.060 Penalty.

Any person violating the provisions of this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be subject to fine of \$250 for the first offense, \$500 for the second offense and \$1,000 and imprisonment in the Orange County Jail for a term not exceeding three months for the third offense."

SECTION III:

Should any section, subsection, clause, or provision of this Ordinance for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance; it being hereby expressly declared that this Ordinance, and each section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, approved and ratified irrespective of the fact that

any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION IV:

A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. A summary of this Ordinance shall also be published once within fifteen (15) days after this Ordinance's passage in a newspaper of general circulation, published, and circulated in the City of Orange. The City Clerk shall post in the Office of the City Clerk a certified copy of the full text of such adopted Ordinance along with the names of those City Council members voting for and against the Ordinance in accordance with Government Code Section 36933. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

ADOPTED this ____ day of _____, 2007.

Carolyn V. Cavecche, Mayor, City of Orange

ATTEST:

Mary E. Murphy, City Clerk, City of Orange

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF ORANGE)

I, MARY E. MURPHY, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the ____ day of _____, 2007, and thereafter at the regular meeting of said City Council duly held on the ____ day of _____, 2007, was duly passed and adopted by the following vote, to wit:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

Mary E. Murphy, City Clerk, City of Orange

ORDINANCE NO. 23-07

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF ORANGE AMENDING CHAPTER 17.30 OF
TITLE 17 OF THE ORANGE MUNICIPAL CODE
ADDING SPECIAL USE REGULATIONS FOR JOB
CENTERS.**

WHEREAS, for nearly two decades, if not more, the City of Orange (hereafter, "City") has experienced negative secondary impacts arising out of the activities of individuals who utilize commercial parking lots for the purpose of advertising their availability for day labor employment (hereafter, "day laborers"); and

WHEREAS, day laborers typically congregate in large numbers and up to 100 persons believed to be day laborers have been counted in commercial parking lots; and

WHEREAS, day laborer solicitation of motorists driving on City streets and in commercial parking lots distracts motorists from their primary duty, which is to safely operate a motor vehicle so as to not impede the free flow of traffic and to avoid causing damage to property and/or injury to persons; and

WHEREAS, the negative impacts caused by day laborer activity on commercial property include, but are not limited to: vehicles stopping in traffic lanes, vehicles stopping on driveway aprons, jay walking; aggressive solicitation in the form of "swarming" wherein groups of solicitors will converge on a vehicle and in some cases enter the vehicle or jump into the back of pickup trucks without invitation, day laborer solicitors being transported in vehicles in an unsafe manner, littering, urinating in public, and interference with on-site commercial business operations by various means including, but not limited to, solicitors making lewd gestures or comments to customers, congregating around entrances to businesses, occupying bathrooms intended for customers, occupying tables at restaurants without purchasing any items, and ignoring repeated requests by the restaurants and business owners to leave; and

WHEREAS, the congregation of individuals engaged in day laborer solicitation on one person's commercial property has been shown to cause many of these negative impacts to adjacent and nearby commercial properties; and

WHEREAS, over the past years and at least as far back as 1989, the City has received substantial numbers of complaints from residents, business customers and businesses concerning conduct by day laborer solicitors that result in customers not patronizing a business at all, customers altering the hours they shop, and a decrease in business when day laborer solicitors are present; and

WHEREAS, individuals engaged in day laborer solicitation on commercial parking lots often interfere with the safe ingress and egress of motorists and often occupy parking spots required for customer and employee parking; and

WHEREAS, most private property is not a place where the general public has any right to engage in day laborer solicitation without the permission of the private property owner and even in those limited cases where it may be permitted, the private property owner has the right to impose reasonable time, place and manner restrictions; and

WHEREAS, some businesses may actually profit from the presence of day laborers who purchases goods that are sold on site; and

WHEREAS, regulations are needed for those businesses that desire to establish private property job centers at which day laborers and employers can congregate and enter into employment relationships to ensure that the operation of such job centers does not result in negative secondary effects to adjoining businesses, to traffic safety or the use of the public right-of-ways.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE DOES ORDAIN AS FOLLOWS:

SECTION I:

Section 17.30.070 is added to the Orange Municipal Code to provide as follows:

"17.30.070 Job Centers.

A. Definitions.

1. "Job center" is defined as a location at which five or more individuals seeking employment are permitted by the property owner to congregate at one time to advertise their availability to perform work which is performed at an off site location and which work is not at the direction or on behalf of the property owner.

2 "Property owner" shall mean the person or entity that owns the property in fee, is a tenant or a person who is otherwise in lawful possession of the property and their respective designated agents.

B. Minor site plan review. All applications for a job center shall be submitted for minor site plan review in accordance with this Code.

C. Conditional use permit required. A job center may be located within any commercial or industrial districts with a conditional use permit and may be the primary use or an accessory use, provided that the area designated as the site for users to congregate is at least 100 feet away from the nearest residential use as measured from the nearest property line.

D. Guidelines to be used in conditional use permit review. The following development standards shall be considered by the Planning Commission in its review of a conditional use permit application for a job center.

1. Restroom facilities. Restroom facilities shall be made available during all hours that the job center is in operation.

2. Operating hours. Operating hours shall begin no earlier than 6 a.m. and end no later than noon. Extended hours may be granted upon a showing of a need.

3. Trash receptacles. Trash receptacles shall be available and shall be maintained in manner so as to prevent any overflow. The job center shall be maintained free of litter.

4. Site plan. A site plan shall include a circulation plan that includes a designated site at which users can congregate and which promotes safe ingress and egress and causes minimal disruption to public street traffic flow. The congregation site shall not be located in an area that utilizes parking space at any time when any business that is authorized to use such parking is open.

5. Rules for use. A set of rules governing the conduct of persons utilizing the job center shall be submitted with any application. The rules shall be designed to provide for an orderly method of employment and to prevent large groups of individuals from rushing a potential employer. The rules shall provide that users shall not go upon adjacent private property or the immediately adjacent public right of way for the purpose of solicitation and shall not otherwise interfere with any adjacent or nearby business or their customers. The rules shall provide that individuals violating these rules will be prohibited from utilizing the job center. The job center shall keep a list of the names of any individuals who have been prohibited from utilizing the job center and make such list available to the City upon request. The rules governing the use of the job center shall be posted in a conspicuous place on the property.

6. It is left to the property owner to determine what, if any, identification may be required from persons using the job center, whether or not to charge a fee and to otherwise determine compliance with state and federal laws.

7. If the job center results in an increase in police services to the location or adjacent locations, the City may require that a private security guard be provided.

SECTION II:

Should any section, subsection, clause, or provision of this Ordinance for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance; it being hereby expressly declared that this Ordinance, and each section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, approved and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional. This Ordinance shall be prospective in application from its effective date.

SECTION III:

A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. A summary of this

Ordinance shall also be published once within fifteen (15) days after this Ordinance's passage in a newspaper of general circulation, published, and circulated in the City of Orange. The City Clerk shall post in the Office of the City Clerk a certified copy of the full text of such adopted Ordinance along with the names of those City Council members voting for and against the Ordinance in accordance with Government Code Section 36933. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

Adopted this _____ day of _____, 2007

Carolyn V. Cavecche, Mayor

ATTEST:

Mary E. Murphy
City Clerk of the City of Orange

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF ORANGE)

I, MARY E. MURPHY, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the ____ day of _____, 2007, and thereafter at the regular meeting of said City Council duly held on the ____ day of _____, 2007, was duly passed and adopted by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mary E. Murphy
City Clerk of the City of Orange